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January 24, 1983

Ms. Tess Tetix, Director  
Division of Human Resources  
11 Depot Street  
Concord, New Hampshire 03301

Dear Ms. Tetix:

This is a response to a request for an opinion from our office regarding the following questions:

Can funding provided to the State for fiscal year 1982 for low-income energy assistance block grants be used to cover expenditures made in fiscal year 1982 for assistance grants originally made in 1981 which have been disallowed by the federal government?

Can funding provided to the State for any subsequent fiscal year be used to cover those same expenditures?

It is our informal opinion that the answer to both questions is yes.

42 U.S.C. §8624(g) provides:

"The State shall repay to the United States amounts found not to have been expended in accordance with this subchapter or the secretary may offset such amounts against any other amount to which the State is or may become entitled under this subchapter."

Therefore, should the federal government disallow certain low-income energy resistance grants made in fiscal year 1982



because of improper documentation, there are two methods that may be used to cover the disallowed expenditures: either the State must repay those amounts or the Secretary of Health and Human Services will offset them against subsequent grants. The federal act, however, does not specify how the amounts are to be offset or the funds from which repayment may come.

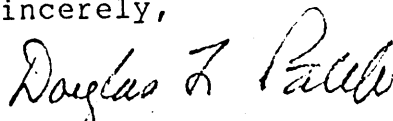
The block grant program affords significant discretion to the states. 45 C.F.R. 596.50(e) says that the states are primarily responsible for interpreting the governing statutory provisions under the block grant programs. This regulation states: "In resolving any issue raised by a complaint or a federal state's interpretation of its assurances and of the provisions of the block grant statutes unless the interpretation is clearly erroneous."

It is therefore our opinion that any funds remaining from fiscal year 1982 or 1983 low-income energy assistance block grants could be used to repay the federal government for disallowed expenditures. There is nothing in the federal act to bar such repayment. It is also our opinion that disallowed expenditures could be offset against subsequent fiscal year grants, even over a number of fiscal years, in order to cover the full amount of disallowed expenditures. Moreover, there is no reason why disallowed expenditures could not be covered by a combination of repayment and offsetting against future grants. The federal act, 42 U.S.C. §8621 through §8629, is sufficiently broad to warrant either or both procedures. Regardless of which method is used the State will be denied the expenditure of the amount that has been disallowed, which is apparently the intent of the act.

It should also be noted that before the State is ordered to repay any amounts not expended in accordance with law or the Secretary withholds any funds to offset disallowed expenditures, the State must be provided with an opportunity for hearing. 45 C.F.R. §96.51.

I trust this has been responsive to your questions. Please let me know if you have any further questions or comments.

Sincerely,



Douglas L. Patch  
Assistant Attorney General  
Division of Legal Counsel

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